

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DAVID S. YARNALL,	)	
	)	
Plaintiff,	)	
	)	CONSOLIDATED
vs.	)	Civ. No. 05-527-SLR
	)	Civ. No. 06-501-SLR
CORPORAL ANTHONY MENDEZ,	)	Civ. No. 06-520-SLR
DELAWARE STATE POLICE TROOP 7,	)	
PTLM LOWE and PFC BUCHERT,	)	
MILLSBORO POLICE DEPARTMENT,	)	
	)	
Defendants.	)	

**STATE DEFENDANTS' RESPONSE TO CROSS-CLAIM**

The Department of Justice, on behalf of Corporal Anthony Mendez and the Delaware State Police ("the State Defendants"), respond to the cross-claim of Defendants Lowe, Buchert, and the Millsboro Police Department ("the Millsboro Defendants") for contribution.

**FIRST AFFIRMATIVE DEFENSE**

Eleventh Amendment sovereign immunity bars the claim for contribution against the State Defendants. The cross-claim is derivative of plaintiff's Section 1983 action, and is not a Section 1983 action against Corporal Mendez in his individual capacity for violation of the Millsboro Defendants' civil rights. A political subdivision cannot maintain a civil rights action against the State that created it.

**SECOND AFFIRMATIVE DEFENSE**

The cross-claim for contribution fails to state a claim upon which relief can be granted as a matter of law. The issue of contribution in a civil rights action is controlled by federal, not state, law. Federal common law does not recognize a right of contribution in a Section 1983 action.

Respectfully submitted,

/s/ W. Michael Tupman  
W. Michael Tupman  
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Attorney for Corporal Mendez and  
Delaware State Police

Dated: December 15, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of December, 2006, I filed and served electronically the State Defendants' Response to Cross-Claim; on that same date, I sent a hard-copy of that Response to Cross-Claim by first-class U.S. Mail, postage prepaid, to the Clerk of the Court; and on that same date I sent two hard copies of that Response to Cross-Claim by first-class U.S. Mail, postage prepaid, to:

David S. Yarnell  
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Plaintiff *pro se*

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/s/ W. Michael Tupman  
W. Michael Tupman